



October 8, 2021

VIA ECF

The Honorable P. Kevin Castel
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, New York 10007

Re: *In re Google Digital Advertising*, 1:21-md-03010 (PKC); *State of Texas, et al. v. Google LLC*, No. 1:21-cv-06841 (PKC)

Dear Judge Castel:

Per the Court's September 7, 2021 Order (ECF No. 61), we write on behalf of the Plaintiff States to respond to Defendant Google LLC's Pre-Motion Letter (ECF No. 136). Pursuant to the Court's Individual Practices, we note that there is no conference scheduled at this time.

The States' Second Amended Complaint (ECF No. 81) alleges, with extensive factual detail, how Google has harmed competition in online display advertising markets and violated Sections 1 and 2 of the Sherman Act. Yet Google's Pre-Motion Letter ignores many of the States' allegations, misapplies relevant antitrust law, and invokes inapt legal doctrines. Google's preliminary efforts to undermine the States' antitrust claims by depriving them of context are without merit.

As Google acknowledges, the States conducted a thorough pre-suit investigation of Google's anticompetitive conduct. Accordingly, the Second Amended Complaint includes a level of factual detail far beyond what is legally required of antitrust plaintiffs. But to the extent Google's Pre-Motion Letter implies otherwise, the States should not be held to a higher pleading standard because they conducted pre-suit discovery.

The Second Amended Complaint more than satisfies the pleading standard for federal antitrust cases. However, the fact that Google's Pre-Motion Letter misunderstands the Second Amended Complaint's factual allegations and legal claims suggests that both Google and the Court would benefit from a refined statement of the States' case. Accordingly, the States respectfully request leave to amend their complaint to clarify and supplement their allegations and claims and avoid the time-intensive process associated with a formal motion to dismiss. If Google remains unsatisfied with the States' revised allegations, the States will welcome the opportunity to respond to the arguments Google raised in its Pre-Motion Letter.

After considering the schedule proposed in Google's Pre-Motion Letter, the States and Google reached agreement on a revised schedule and respectfully request that the Court adopt the following schedule:

- The States' deadline to file their Third Amended Complaint is November 12, 2021 (five weeks from this letter);
- Google's deadline to file an answer or motion to dismiss is January 21, 2022 (ten weeks after the States' deadline to amend);
- if Google moves to dismiss, the States' response is due March 22, 2022 (60 days after Google's deadline to move to dismiss); and
- Google's reply, if any, is due April 21, 2022 (30 days after the States' response deadline).

The agreed schedule both accounts for the November/December holidays and provides a reasonable amount of time for the States to present the Court and Google with a complaint aimed at resolving Google's misunderstandings of the facts and claims at issue. Additionally, to the extent motion to dismiss practice becomes necessary, the States agree with Google's requested page limits: 40 pages for Google's motion, 40 pages for the States' response, and 20 pages for Google's reply.

Respectfully submitted,

/s/ W. Mark Lanier

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Submitted on behalf of all Plaintiff States

CC: Counsel of Record